



Policy: 2302
Procedure: 2302.06
Chapter: Juvenile Rights and Hearings
Rule: Conditional Liberty Revocation Hearings

Effective: 06/02/06
Replaces: 2302.06
Dated: 10/17/05

Purpose:

When there has been a finding of probable cause to believe that a juvenile has violated one or more terms of conditional liberty, a final hearing may be held to determine whether the juvenile shall remain on conditional liberty or be subject to sanction.

Rules:

1. **Waiver of Revocation Hearing after Re-award with Court Ordered Length of Stay:**
Within two business days of a juvenile's arrival at a secure facility following a re-award with a court-ordered length of stay, a **JUVENILE OMBUDS (JO)** shall meet with the juvenile and discuss and complete the form 2302.06J (Waiver of Revocation Hearing after Re-award with Court Ordered Length of Stay).
 - a. If the juvenile chooses to not waive the right to a Revocation Hearing, the Revocation Hearing shall be conducted in accordance with this procedure.
 - b. If the Juvenile waives the right to a Revocation Hearing:
 - i. The **JO** shall inform the Due Process Proceedings Office as soon as possible and fax a copy of the waiver;
 - ii. The **YOUTH HEARING OFFICER (YHO)** shall review the file to ensure the waiver is appropriate and if the waiver is appropriate under the circumstances, the **YHO** shall then complete an Administrative Form (A-Form) revoking the juvenile's conditional liberty in accordance with the court-ordered length of stay.
2. **Scheduling and Discovery:** The charging document in a conditional liberty revocation proceeding is the warrant/citation:
 - a. The **PAROLE OFFICER** shall document all allegations to be considered on the warrant/citation;
 - b. The **YOUTH RIGHTS OMBUDS ADMINISTRATOR (YROA)** shall assign the case to a Juvenile Ombuds (JO) upon notice of the allegations;
 - c. The **PAROLE OFFICER** may amend the warrant/citation providing s/he makes and transmits all amendments to the juvenile's JO at least five business days before the hearing.
3. **Notice:** At least five business days before the conditional liberty revocation hearing the **JO** or **DESIGNEE** shall give the juvenile oral and written notice in a language the juvenile understands (Form 2302.05A Youth Rights/Hearing Notice (Detained) or 2302.06C Youth Rights Hearing Notice (not Detained)):
 - a. His/her rights;
 - b. The allegations against him/her;
 - c. The possible consequences of any admission;
 - d. The date, time, and place of the hearing.
4. The **YHO** shall conduct the revocation hearing within ten business days of:
 - a. A juvenile's return to a secure facility due to a judicial finding of probable cause established when:
 - i. The juvenile had a preliminary hearing while in juvenile detention and probable cause was found by the court; or
 - ii. The juvenile has been adjudicated delinquent by the juvenile court, whether or not the juvenile was re-awarded to the Department.

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- b. A finding of probable cause was established when a suspension hearing was conducted at a secure facility in accordance with Procedure No. 2302.05 Conditional Liberty Suspension Hearing; or
 - c. Notice to a juvenile, when the juvenile is not detained pending the revocation hearing.
5. The **CHIEF HEARING OFFICER (CHO)** or **DESIGNEE** may grant a continuance upon a showing of good cause.
 - a. The **PAROLE OFFICER** and/or **JO** shall make any motions for continuance in writing and transmit the information by email, fax, or hand delivery to the CHO and to the other party. (Form 2302.05D Motion for Continuance or in email);
 - b. The **CHO** shall give the JO or designee an opportunity to respond to a request for continuance made by the Parole Officer or designee. The **CHO** shall also give the Parole Officer an opportunity to respond to requests for continuance made by the JO;
 - c. The **YHO** shall only consider a motion for continuance made orally at the scheduled hearing if the delay in requesting a continuance is found by the YHO to have been unavoidable and it is in the interest of due process;
 - d. The **CHO** or **YHO** shall not grant a continuance for longer than five business days unless it is determined that the juvenile will be unavailable for a hearing for more than five days. When necessary, the **CHO** may grant additional continuances.
6. The **PAROLE OFFICER** and the **JO** shall provide each other with a list of witnesses who may be called, consisting of names, telephone numbers, and/or addresses. In addition, the **PAROLE OFFICER** and the **JO** shall provide copies of documents to the other or provide an opportunity to inspect exhibits, as applicable.
 - a. The **PAROLE OFFICER** shall satisfy this obligation as soon as possible but no later than:
 - i. The submission of an amended warrant or citation; or
 - ii. Five calendar days before the hearing, where no amendment is made.
 - b. The **JO** shall satisfy this obligation within two calendar days of the receipt of the Parole Officer's list;
 - c. **EACH PARTY** shall submit its evidence list together with copies of the evidence to the Due Process Proceedings Office (DPPO) when submitting them to the other party;
 - d. The obligation to disclose evidence is ongoing for both parties.
 - i. **EACH PARTY** shall disclose evidence to the opposing party within a reasonable time after its discovery;
 - ii. The **YHO** may exclude undisclosed or late-disclosed evidence from the fact-finding portion of the hearing for failure to comply with this rule.
7. The **DPPO** shall provide an interpreter when the juvenile whose conditional liberty is at issue, the juvenile's parent or guardian, or any witness is unable to fully participate in the hearing without the assistance of a foreign language or American Sign Language interpreter.
 - a. If the **PAROLE OFFICER** or the **JO** becomes aware of the need for an interpreter, **S/HE** shall immediately notify the DPPO by telephone, email, fax, or in person of the need and shall specify the language for which the interpreter is needed;
 - b. Upon notification of such need the **DPPO** shall arrange for the services of the necessary interpreter.
8. **The Hearing:** The **YHO** shall divide each revocation hearing into two phases: fact-finding and disposition. The **YHO** shall ensure that a tape recording of every hearing shall be made and maintained no less than six months in cases that are not appealed and no less than six months beyond the date of resolution of any appeal.
9. **Fact Finding:** The **YHO** shall conduct the fact-finding phase of the hearing as follows:
 - a. The **YHO** shall confirm that a suspension hearing was held where applicable;
 - b. The **YHO** shall confirm that the juvenile, the JO, and the Parole Officer or designee are ready to proceed;

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- c. The **YHO** shall affirm or swear in all witnesses. The **YHO** may administer the oath or affirmation individually or collectively;
 - d. The **YHO** shall confirm that at least five business days before the hearing the juvenile was given oral and written notice of (Form 2302.05A Youth Rights/Hearing Notice (Detained) or 2302.06C Youth Rights Hearing Notice (not Detained)):
 - i. His/her rights;
 - ii. The allegations against him/her;
 - iii. The possible consequences of admission;
 - iv. The date, time, and place of the hearing.
 - e. In the event that one or more of the notifications was not timely made, the **YHO** shall exercise discretion as justice requires. Sanctions may include, but are not limited to, continuance of the hearing or dismissal of the case.
10. The **YHO** shall read the alleged violation(s) of conditions of liberty to the juvenile. The **YHO** shall confirm that the juvenile is aware of the possible consequences of an admission. The **YHO** shall request that the juvenile plead "admit", "deny", or "no contest" to each allegation. A plea of "no contest" shall be deemed as admission for the purposes of the hearing in which it is entered but may not be used against the juvenile in any other court proceeding or Administrative Due Process Hearing.
11. After the juvenile has entered a plea to each allegation, the **YHO** shall proceed to consider evidence for all allegations to which the juvenile pled "deny". The burden of proof lies with the Department. The standard of proof is preponderance of the evidence; that is, it is "more likely than not" that the juvenile committed the allegation against him/her.
- a. The **YHO** may allow each party to make a brief opening statement;
 - b. The **PAROLE OFFICER** or **DESIGNEE** shall present evidence in support of each allegation denied by the juvenile. This may include oral, physical, and documentary evidence;
 - c. The **JUVENILE** and the **JO** may question the Parole Officer or designee and any witness presented by the Parole Officer;
 - d. After the Parole Officer or designee concludes the presentation of evidence, the **JO** may present the juvenile's case. This may include oral, physical, and documentary evidence;
 - e. The **PAROLE OFFICER** may question any witness called by the juvenile or **JO**;
 - f. The **YHO** may question any witness called by either party.
12. Evidence shall be admissible if it is relevant and reliable.
- a. Hearsay is admissible, provided there is sufficient indication of its reliability;
 - b. Hearsay beyond the second level is rebuttably presumed to be unreliable;
 - c. Evidence that is redundant or privileged is inadmissible;
 - d. The Arizona Rules of Evidence are instructive, but the fact that evidence would not be properly admitted under the Arizona Rules of Evidence shall impact the weight it is given, not the admissibility of the evidence.
13. The **YHO** shall not consider any information regarding any allegation that is not contained in the warrant or citation during the fact-finding phase.
14. The **YHO** may order that the examination of evidence or of a witness including the alleged victim be conducted outside the presence of the juvenile and/or that a witness' identity not be disclosed, in order to safeguard a witness or the security of an ADJC secure facility.
- a. The **YHO** may order this in exceptional circumstances;
 - b. **ANY PARTY** requesting such examination shall do so in writing and transmit the request by fax, email, or hand delivery to the **CHO** or **YHO**, and the other party;
 - c. The **OTHER PARTY** may respond to any such request by fax, email, or hand delivery to the **CHO** and to the requesting party;
 - d. The **CHO** or **YHO** shall make the decision a part of the hearing record;

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- e. The **YHO** shall order that the juvenile be removed and shall determine whether the hearing is to be continued or shall proceed in the juvenile's absence in the event that a situation arises at the hearing where the continued presence of the juvenile poses a danger to another or to the security of the facility. The **JO** may remain.
15. At the close of submission of evidence, the **YHO** may allow closing arguments.
16. At the completion of the fact-finding phase, the **YHO** shall weigh the evidence and determine for each allegation whether it was proven or not proven. The **YHO** shall announce a decision as to each allegation at the hearing; for good cause, the **YHO** may take the matter under advisement for no more than three business days. The **YHO** shall hold the disposition phase no more than three business days after the fact-finding is announced.
17. If a finding of not proven is made to every allegation, the **YHO** shall order that juvenile's conditional liberty be reinstated.
18. **Disposition Phase:** If there is a finding of proven to any of the allegations, the **YHO** shall decide an appropriate disposition based upon all evidence admitted during the hearing. Disposition evidence consists of all relevant information and recommendations that are properly admitted into evidence and may include:
- a. Any evidence already admitted at the fact finding phase;
 - b. Any new testimony or documentary evidence admitted in the disposition phase, such as evidence of:
 - i. The juvenile's level of compliance with the conditions of parole;
 - ii. The juvenile's progress on his/her continuous case plan;
 - iii. The risk the juvenile poses to the community, as demonstrated by the juvenile's behavior and level of compliance and the ADJC community risk score last completed for the juvenile; and
 - iv. Any other evidence relevant to making the disposition in the best interest of the juvenile and the community.
19. Disposition testimony/evidence is presented in the following order:
- a. **DEPARTMENT (PAROLE OFFICER OR DESIGNEE)** shall present evidence/testimony;
 - b. **JUVENILE (JO, DESIGNEE, OR COUNSEL)** shall present evidence/testimony;
 - c. **VICTIM** shall present a victim impact statement and/or evidence as described in Rule 20 below;
 - d. **EACH PARTY** may question any witness called by either party;
 - e. The **YHO** may question any witness and consider all information in the juvenile's file;
 - f. The **YHO** may alter the order of presentation where appropriate.
20. **ANY VICTIM**, as identified by ARS § 8-382(19), who has opted in as a participant pursuant to procedures established by the Department has the right to be present at the revocation hearing:
- a. The **VICTIM** shall have the right to present a victim impact statement during the disposition phase in person or through a Victims' Rights representative. The **YHO** shall afford the victim broad discretion to present the statement, but may interrupt the victim in the interest of safety or when it is deemed excessively redundant;
 - b. The victim's impact statement is not subject to cross examination, but the **YHO** may ask questions of the victim and may allow discussion between the victim and other participants when the victim requests to do so and when it appears to be in the best interest of the victim and the juvenile;
 - c. The **VICTIM** may submit a written, videotaped, or audiotaped impact statement in lieu of, or in addition to, the normal statement. The **YHO** shall retain any victim impact statement submitted as part of the record;

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- d. The **VICTIM** may present an impact statement to the YHO outside the presence of the juvenile and the juvenile's family, upon request. The **JO** may remain for the victim's statement;
 - e. In the event the victim wishes to present evidence relevant to one or more of the allegations being heard in the fact-finding phase, the **YHO** shall subject the victim, when so testifying, to the same procedure as any fact witness;
 - f. When the **VICTIMS' RIGHTS ADMINISTRATOR** learns of a victim's intention to appear at a hearing, **S/HE** shall immediately notify the DPPO.
21. At the completion of the Disposition Phase, the **YHO** shall announce a decision.
- a. The **YHO** may revoke conditional liberty in accordance with the ADJC Risk/LOS Classification Matrix, Form 2302.06G, except as provided in paragraph b. below, when the juvenile's return to or placement in a secure facility is in the best interest of the public;
 - b. For Parole Revocations based upon proven allegations of a misdemeanor only (not for new commits, re-awards or recommits), the **YHO** shall have the discretion to revoke a juvenile's Conditional Liberty for 3 or 6 months. In making the determination whether to revoke for 3 or 6 months, the **YHO** shall consider the risk factor and also, among others, the following factors:
 - i. Mitigating Factors:
 - (1) No previous need for intensive supervision in the community;
 - (2) No previous need for residential treatment in the community;
 - (3) Family support is present and viable;
 - (4) Treatment needs are best addressed in a less secure setting;
 - (5) The juvenile is a vulnerable child;
 - (6) Nature of the current offense;
 - (7) Prior offense history.
 - ii. Aggravating Factors:
 - (1) Pattern of violent behavior not necessarily reflected in the current offense;
 - (2) Use of a weapon in current or past offenses;
 - (3) History of arson;
 - (4) Sex abuse offense or previous sex offenses in offense history;
 - (5) History of excessive plea bargaining;
 - (6) Previous community interventions not successful (chronic failure at community placement);
 - (7) Exceptional injury to victim;
 - (8) Awaiting additional adjudications.
 - c. The **YHO** shall explain on the record and in the written report the reasons for selecting the 3 or 6 month revocation;
 - d. The **YHO** may reinstate the juvenile on conditional liberty under the same or amended terms upon a finding that the juvenile has violated one or more terms of conditional liberty and that it is in the best interest of the juvenile and the public;
 - e. The **YHO** may in extraordinary cases take the matter under advisement for no more than two business days. In such cases the DPPO shall inform the juvenile, Parole Officer or designee, and the JO of the decision when it is made;
22. The **YHO** shall make necessary entries to YouthBase as follows:
- a. The **YHO** shall update the status/movement data for the juvenile at the end of all scheduled hearings;
 - b. The **YHO** shall, upon returning to Central Office, enter all necessary data related to the allegations at the hearing.
23. Within five business days of the Disposition Phase the **YHO** shall complete a disposition report containing findings of fact, the decision, and the reasoning as to each allegation and the disposition.

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24. **Appeals:** A **JUVENILE** may appeal the outcome of the revocation hearing.
- a. The **JO** or **ANY EMPLOYEE** shall provide Form 2302.06A Juvenile Appeal to a juvenile upon his/her request;
 - b. The **JO** shall file the appeal at the DPPO and provide a copy of the appeal to the juvenile's Parole Officer within five business days of the issuance of the disposition report;
 - c. The **JO** or the **JUVENILE** shall set forth the reasons for the appeal and the relief sought. The basis for an appeal is limited to:
 - i. A finding of proven made without any evidence to support it; or
 - ii. A procedural deficiency in either phase of the hearing;
 - iii. A finding made in violation of an ADJC policy, procedure, or any state or federal law.
 - d. The **DEPARTMENT** may file a response at the DPPO no later than five business days after the receipt of the appeal;
 - e. The **PAROLE OFFICER** shall consult with the Attorney General Liaison regarding the possible filing of a response;
 - f. The **DPPO** shall forward the appeal along with the disposition report to the Legal Systems Assistant Director for review;
 - g. The **LEGAL SYSTEMS ASSISTANT DIRECTOR** shall review the materials submitted for an abuse of discretion by the YHO. **S/HE** may request a transcription of the hearing. If no transcript is requested, the **LEGAL SYSTEMS ASSISTANT DIRECTOR** shall issue a decision within five business days of transmittal of the appeal from the DPPO. If a transcript was requested, the **LEGAL SYSTEMS ASSISTANT DIRECTOR** shall issue the decision on the appeal within ten business days of transmittal;
 - h. The **LEGAL SYSTEMS ASSISTANT DIRECTOR** shall complete a Form 2302.06B Decision on Appeal containing the decision and reason(s) for the decision. The report shall specify the Legal Systems Assistant Director's conclusions with respect to each objection or reason for appeal raised by the juvenile. The **LEGAL SYSTEMS ASSISTANT DIRECTOR** may affirm a decision, reverse a decision, or remand it to the DPPO for further proceedings;
 - i. If a decision is remanded, the **CHO OR DESIGNEE** shall hold the resulting hearing within five business days of the decision with the content limited as specified in the decision to remand;
 - j. If the appeal raises issues that may require amendment to existing policies, procedures, or practices, the **LEGAL SYSTEMS ASSISTANT DIRECTOR** shall forward his/her report, including recommendations for the resolution of issues that were raised to the Director and the Assistant Director for Programs and Institutions.
25. **Motions for Reconsideration After Re-award:**
- a. A **JUVENILE** may file a Motion for Reconsideration after Re-award to have his/her Minimum Release Date (MRD) reconsidered only under all of the following circumstances:
 - i. A juvenile has been revoked by a YHO;
 - ii. While on institutional status, the juvenile is adjudicated delinquent by the Superior Court for the same event or series of events;
 - iii. The Superior Court re-awards the juvenile to the Department as follows:
 - (1) Without a specified length of stay;
 - (2) Without a specific commencement date for the length of stay; or
 - (3) With a shorter length of stay than the length of stay ordered by the YHO.
 - iv. The soonest MRD for the juvenile has passed or will occur within 30 days of the Motion;
 - v. The juvenile has not had allegations found proven in a disciplinary hearing or been admitted to Separation for Danger to Others or Escape Risk within 60 days of the Motion; and
 - vi. The juvenile does not have pending charges or outstanding warrants.
 - b. The **JO** or **ANY EMPLOYEE** shall provide Form 2302.06H Motion for Reconsideration after Re-award to a juvenile upon his/her request. The **JUVENILE** shall:
 - i. Establish in the Motion that jurisdiction is appropriate; and

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- ii. Specifically state the requested relief; i.e., to change the effective date of the later-ending MRD to run concurrently with the sooner-ending MRD.
- c. The **JO** shall file the Motion with the DPPO and provide a copy of the appeal to the juvenile's Parole Officer and, if there is a registered victim, to the Victims' Rights Unit;
- d. The **CHO** or **DESIGNEE** shall ensure that the jurisdictional basis is appropriate for the Motion. If the Motion was not properly filed, the **DPPO** shall return it to the juvenile and the JO without further action;
- e. If the Motion was properly filed, the **CHO** may grant the Motion and grant the requested relief if there is no objection by the PO or a registered victim, or the **CHO** may schedule a hearing and provide appropriate notice. The **YHO WHO ORDERED THE REVOCATION** shall conduct the hearing, if possible;
- f. If a hearing is held, the **YHO** shall:
 - i. Proceed with the Reconsideration after Re-award as s/he would with the Disposition Phase of a Revocation hearing; and
 - ii. Issue a decision and a written report pursuant to Rules 18 through 23 above.
- g. At a hearing, the **YHO** may:
 - i. Leave the two MRDs as is; or
 - ii. Change the effective date of the later-ending MRD to run concurrently with the sooner-ending MRD.
- h. If the YHO denies the requested relief after a hearing, a **JUVENILE** may appeal the order pursuant to the Appeal procedure in Rule 23 above.

26. Motions for Reconsideration After Nondelinquent Adjudication:

- a. A **JUVENILE** may file a Motion for Reconsideration after Nondelinquent Adjudication to reconsider a YHO revocation or MRD only under all of the following circumstances:
 - i. A juvenile has been revoked by a YHO;
 - ii. While on institutional status, the juvenile is adjudicated non-delinquent by the Superior Court for the same event or series of events;
 - iii. The juvenile has not had allegations found proven in a disciplinary hearing or been admitted to Separation for Danger to Others or Escape Risk within 60 days of the Motion; and
 - iv. The juvenile does not have pending charges or outstanding warrants.
- b. The **JO** or **ANY EMPLOYEE** shall provide a Motion for Reconsideration after Nondelinquent Adjudication Form 2302.06I to a juvenile upon his/her request. The **JUVENILE** shall:
 - i. Establish in the Motion that jurisdiction is appropriate; and
 - ii. Specifically state the requested relief; i.e., to reconsider a YHO revocation or MRD.
- c. The **JO** shall file the Motion with the DPPO and provide a copy of the appeal to the juvenile's Parole Officer and, if there is a registered victim, to the Victims' Rights Unit;
- d. The **CHO** or **DESIGNEE** shall ensure that the jurisdictional basis is appropriate for the Motion. If the Motion was not properly filed, the **DPPO** shall return it to the juvenile and the JO without further action;
- e. If the Motion was properly filed, the **CHO** may grant the Motion and grant the requested relief if there is no objection by the **PO** or a registered victim, or the **CHO** may schedule a hearing and provide appropriate notice. The **YHO WHO ORDERED THE REVOCATION** shall conduct the hearing, if possible;
- f. If a hearing is held, the **YHO** shall:
 - i. Proceed with the Reconsideration Hearing as s/he would with the Fact-Finding and Disposition Phases of a Revocation Hearing; and
 - ii. Issue a decision and a written report pursuant to Rules 18 through 23 above.
- g. At a hearing, the **YHO** may reverse the earlier-ordered revocation decision by finding the earlier allegations unproven or may order a shorter length of stay if appropriate;
- h. If the **YHO** denies the requested relief after a hearing, a **JUVENILE** may appeal the order pursuant to the Appeal procedure in Rule 23 above.

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27. Pursuant to Title II of the Americans with Disabilities Act (ADA) of 1990, auxiliary aids for effective communication shall be provided to participants at the hearing. The **JUVENILE'S HOUSING UNIT MANAGER, PAROLE OFFICER**, and/or the **ASSIGNED JO** shall notify the DPPO of any special needs at least two business days prior to the hearing date. The **DPPO** shall provide for those needs.

Effective Date:	Approved by Process Owner:	Review Date:	Reviewed By:
06/02/2006	Charles Adornetto		